

1  
2  
3  
4  
5  
6  
7 **UNITED STATES DISTRICT COURT**  
8 **NORTHERN DISTRICT OF CALIFORNIA- SAN JOSE DIVISION**  
9

10 Carlton Loeber,

11 Plaintiff,

12 v.

13 Ameer Alghusain et al.,

14 Defendants.  
15  
16  
17

No. 21-CV-00505-VKD

**MOTION TO DISMISS PLAINTIFF  
COMPLAINT**

Date: April 13, 2021

Time: 10:00 am

Location: San Jose Courthouse

Courtroom 2, 5<sup>th</sup> Floor

The Honorable Virginia K. DeMarchi

18  
19  
20 Defendant Ameer Alghusain “Defendant” hereby submits his motion to dismiss Plaintiff  
21 Carlton Loeber “Plaintiff” Complaint. Ground for dismissal is based on Federal Rules of Civil  
22 Procedure Rules 12(B) (1) and 12(B)(6). **PLEASE TAKE NOTICE** that on April 13, 2021 at 10  
23 am, or as soon thereafter as the matter may be heard before the Honorable Judge Virginia K.  
24 DeMarchi, in Courtroom 2 of the United States District Court for the Northern District of  
25 California, located at San Jose Courthouse, 5th Floor, 280 South 1st Street, San Jose, CA, 95113,  
26 Defendant will move the Court to dismiss Plaintiff Complaint. This motion is made pursuant to  
27 Rule 12(B)(1) and Rule 12(B)(6) of the Federal Rules of Civil Procedure on the grounds that this  
28

1 Court is civil in nature and does not have the subject matter jurisdiction over US Criminal codes  
2 claimed as cause of action by Plaintiff in his claim 1 and claim 2. Also, Plaintiff failed to state a  
3 legal claim upon which relief could be granted. Alternatively, Defendant asks for a more definite  
4 statement of the claims against him.

### 7 **FACTS AND BACKGROUND**

8 Defendant and Plaintiff were good friends, business partners and travelled together to  
9 Jordan. Plaintiff invested \$13,000 in January 2017 in a company called AMIDAC Rail Inc. and  
10 he deposited the money into a business bank of America account. The company ordered raw  
11 material supplies, manufactured goods, shipped the goods to a railway customer in Boston, the  
12 company collected payment and that payment was controlled by an accountant called Jason  
13 Nemeth, who is a Defendant being sued by Ameer Alghusain in this Court, Case 20-CV-05175-  
14 BLF. This case is currently pending before the Honorable Judge Beth Labson Freeman.

15  
16 The company, AMIDAC Rail Inc, after collecting payments, has paid Plaintiff Carlton  
17 Loeber the total sum of \$3,970.00, please see attached the agreement of promissory note  
18 AMIDAC Rail Inc sent to Plaintiff and Mr. Carlton Loeber refused to sign, he wanted payments  
19 in CASH and refused to accept checks or electronic payment and he refused to provide receipts to  
20 prove that he has received the promised payments.

21  
22 On January 13, 2020, after Defendant Ameer Alghusain asked the accountant Jason  
23 Nemeth in Ohio to pay Plaintiff Carlton Loeber the balance of the investment plus \$4,000 profits,  
24 however Jason Nemeth sent an e-mail to Plaintiff Carlton Loeber defaming Ameer Alghusain and  
25 describing Ameer Alghusain as investment fraud. This e-mail caused Mr. Carlton Loeber to  
26 assume that these statements made by Jason Nemeth were true and this motivated Mr. Loeber to  
27 bring this action in this Court.

1 The matters escalated between Defendant and Plaintiff and the matter ended resolved by  
2 the Superior Court of Santa Clara County in Ameer Alghusain vs Carlton Loeber. Both Ameer  
3 Alghusain and Carlton Loeber agreed to alternative dispute resolution and mediation was held  
4 and settlement was reached, parties agreed that no party acknowledge prior liabilities. The  
5 mediation resulted in a stipulation and order signed by the Honorable Judge Carol Overton, please  
6 see exhibit B.

7  
8 Defendant Ameer Alghusain advised Plaintiff Carlton Loeber to pursue his claim against  
9 the company AMIDAC Rail Inc and against the Accountant who took the payment for himself  
10 and never paid investors.

11  
12 As Defendant Ameer Alghusain is currently asking justice from this exact Court, he also  
13 wants the same for Plaintiff Carlton, but he cannot advise Plaintiff on what he should do.

14  
15 **I. FEDERAL RULES OF CIVIL PROCEDURE RULE 12(B)(1)**

16 This Court lacks subject matter jurisdiction in regard to Plaintiff Claim One: National  
17 Stolen Property Act 18 USC §2314 and in regard to Plaintiff Claim Two: Wire Fraud 18 USC  
18 §1343. Hence, this Court must dismiss the first and second claims in accordance with FRCP Rule  
19 12(B)(1).

20  
21 **II. FEDERAL RULES OF CIVIL PROCEDURE RULE 12(B)(6)**

22 Plaintiff does not state a third claim, he however state Third Cause of Action under Civil  
23 RICO USC §1964(a) & (c) and 18 USC §1962(c).

24  
25 18 USC §1964- Civil Remedies, provides in section C a remedy to any person injured in  
26 his business or property by reason of violation of section 1962- Prohibited Activities.

27 Here, Plaintiff fails to allege what prohibited activities he is relying on to establish a  
28 claim.

1 Plaintiff fails to allege that Defendant defrauded him by mail or used the US Postal  
2 Services to defraud him. Same, Plaintiff fails to allege that wire transfer was used to defraud him.  
3 In matter of fact, Plaintiff fails to allege any prohibited activities under section 1962 of USC 18.  
4 This is not a RICO claim, this is simply a standard business dispute among business partners and  
5 does not rise to RICO level and this Court should dismiss this claim.

6  
7 Even if this Court to admit the RICO claim, the matters and claims prior to June 30, 2020  
8 between Defendant Ameer Alghusain and Plaintiff Carlton Loeber have been resolved in the  
9 Superior Court of Santa Clara on June 30, 2020. Please see exhibit B: Stipulation and Order  
10 signed by Judge Carol Overton

11  
12 Here, Plaintiff fails to state a claim upon which relief can be granted. This Court should  
13 dismiss the third cause of action per FRCP 12(B)(6).

### 14 15 **III. CONCLUSIONS**

16 Based on the foregoing, Defendant Ameer Alghusain requests this Honorable Court to  
17 dismiss first and second claims against him in accordance with FRCP(B)(1) and also dismiss the  
18 third cause of action against him in accordance with FRCP(B)(6). Alternatively, if this Court will  
19 hold the RICO claim valid, to request Plaintiff to provide Defendant with more definite statement  
20 or file an amended complaint to specify exactly what prohibited activities he alleges and how they  
21 caused him harm. This Court may join any valid claims of Plaintiff to Case 20-CV-05175-BLF to  
22 save the judiciary time and resources.

23  
24 Respectfully submitted,

25 Dated: February 27, 2021

/s/ Ameer Alghusain

26 **Ameer Alghusain, Pro Se**

27 1983 Flint Ave

28 San Jose, California 95148

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing documents have been served this 27<sup>th</sup> day of February 2021 via the court CM/ECF system, upon all counsels of records, and a paper copy of this motion has been mailed to Plaintiff Carlton Loeber address at 1073 Tekman Drive, San Jose, CA 95122 with the US Postal Service mail.

/s/ Ameer Alghusain

**Ameer Alghusain**, Pro Se

1983 Flint Ave

San Jose, California 95148